(3)

Supreme Court, U.S.
FILED

05-385 AUG 5 - 2005

OFFICE OF THE CLERK

No._____

_____

IN THE

**SUPREME COURT OF THE UNITED STATES**

Benny Cohen,

Petitioner(s)

vs.

Allstate Insurance Company,

Respondent(s)

_____

**On Petition For A Writ of Certiorari to**

**The State of New York Court of Appeals**

_____

# PETITION FOR WRIT CERTIORARI

_____

Benny Cohen
1270 East 18 Street Apt 6H
Brooklyn New York 11230
(718) 258 - 1744

## QUESTION(S) PRESENTED

Brief: Plaintiff and defendant agreed in conference hearing that this case will be as a contract case.

1. Does a tort arise from the breach of a legal duty independent to the contract.?

Brief: The Insurance Company put the blame in Their Third Party Summons, on the defendants Doctor Joseph L. Paul and Country-Wide Independent Medical Exam.

2. Does Insurance Company's are obligated by law to investigate before denying a claim.?

Brief: The Supreme Court of the State of New York Appellate Division: Second Judicial Department. Stated: " even if negligent, that there was a causal nexus between any such negligence and the plaintiff's claimed injuries." Therefore, Respectfully, the Supreme Court of the State of New York Appellate Division: Second Judicial Department, and New York Court of Appeals Should not have dismissed plaintiff case.

3. Does causal nexus between such negligence and the plaintiff's claimed injuries occur.?

Brief: Hon. Judge Lewis L. Douglass of the Supreme Court County of Kings, two times denied defendant motion to dismiss.

4. Does the plaintiff injuries can fairly be traced and challenged to the action of the defendant. ?

Brief: The constitutional requisites under Article III for the existence of standing are that the party seeking to sue must personally have suffered some actual or threatened injury that can fairly be traced to the challenged action of defendant and that the injury is likely to be redressed by a favorable decision.

5. Under what federal basis does plaintiff warrant before review of case.?

Brief: The "legal rights" language has now been dispensed with. Rejection occurred in two administrative law cases in which the Court announced that parties had standing when they suffered "injury in fact" to some interest, "economic or otherwise," that is arguably within the zone of interest to be protected or regulated by the statute or constitutional provision in question.

6. Did the plaintiff is given standing, to assert his claims, which directly results in the violation of his legal right. ?

## LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[x] All parties **do not** appear in the caption of the case On the cover page. A list of all parties to the proceeding in the Court whose judgment is the subject of this petition is as follows:

1) Doctor Joseph L. Paul, et al.,

2) Country-Wide Independent Medical Exam P.C. et al.,

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## TABLE OF AUTHORITIES CITED

### CASES

**(1). 79 N.Y.2d 540, 593 N.E.2d 1365, 583 N.Y.S.2d 957 (1992). May 12, 1992**

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**(2). AETNA HEALTH INC. V. DAVILA (02-1845) 307 F.3d 298, reversed and remanded.**

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### STATUTES AND RULES

**(1).** Order modified, without costs,

**(2).** The judgment of the Court of Appeals is reversed, and the cases are remanded for further proceedings consistent with this opinion. It is so ordered.

## IN THE

## SUPREME COURT OF THE UNITED STATES

## PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

## OPINIONS BELOW

[ ] cases from **federal courts:**

The opinion of the United State Court of Appeals appears at Appendix_____ to the petition and is

[ ] reported at_____ :or,

[ ] has been designated for publication but is not yet reported: or,

[ ] is unpublished.

The opinion of the United State Court of Appeals appears at Appendix_ to the petition and is

[ ] reported at_____ :or,

[ ] has been designated for publication but is not yet reported: or,

[ ] is unpublished.

The opinion of the highest state court to review the merits

At Appendix__"B" App. 2 ____to the petition and is

[ ] reported at_____ :or,

[ ] has been designated for publication but is not yet reported: or,
[x] is unpublished.

The opinion of the Appellate Division: Second Judicial Department Appears at Appendix____"C" App. 3 Through App. 4___to the petition and is

[ ] reported at_____:or,

[ ] has been designated for publication but is not yet reported: or,
[x] is unpublished.

The opinion of the Appellate Division: Second Judicial Department

Appears at Appendix___"D" App. 5 _____to the petition and is

[ ] reported at_____:or,

[ ] has been designated for publication but is not yet reported: or,
[x] is unpublished.

The opinion of the Supreme Court of the State of New York County of Kings

Appears at Appendix___"E" App. 6 Through App. 7
__to the petition and is
[ ] reported at_____:or,

[ ] has been designated for publication but is not yet reported: or,
[x] is unpublished.

The opinion of the Supreme Court of the State of New York County of Kings

Appears at Appendix___"F" App. 9 Through App. 10
__to the petition and is

[ ] reported at_____:or,

[ ] has been designated for publication but is not yet reported: or,
[x] is unpublished.

## JURISDICTION

[x] For cases from State Courts;

The date on which the highest state court decided my case was **March 31, 2005**

A copy of the decision appears at appendix **"B" App. 2**

[x] A timely petition for rehearing was thereafter denied on the following date; **June 7, 2005** and a copy of the order denying rehearing appears at appendix **"A" App. 1**

[x] An extension of time to file the petition for a writ of certiorari was granted to and including....**60 Days** (date) on...**August 10, 2005**_____ (date) to **October 8, 2005**__in application No._ _Mail_

The jurisdiction of this Court is invoked under 28 U. S . C . § 1257(a)

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### The Constitution of the United State of America Article III. Judicial Department

* [[Page 658]] Constitutional Standards: Injury in Fact, Causation, and Redressability. -While the Court has been inconsistent over time, it has now settled upon the rule that, ``at an irreducible minimum, '' the constitutional requisites under Article III for the existence of standing are that the party seeking to sue must personally have suffered some actual or threatened injury that can fairly be traced to the challenged action of defendant and that the injury is likely to be redressed by a favorable decision. \340\ \340\ Valley Forge Christian College v. Americans United, 454 U.S. 464, 472 (1982); Allen v. Wright, 468 U.S. 737, 751 (1984); Lujan v. Defenders of Wildlife, 112 S. Ct. 2130, 2136 (1992). See, however, United States Parole Comm. v. Geraghty, 445 U.S. 388 (1980), a class action case, in which the majority opinion appears to reduce the significance of the personal stake requirement. Id., 404 n.11, reserving full consideration of the dissent's argument at id., 401 n. 1, 420-421. ----------For